

Chapter Nineteen

RESTRICTED-USE PESTICIDES: DEALER AND APPLICATOR RECORD INSPECTIONS

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RESTRICTED-USE PESTICIDES: DEALER AND APPLICATOR RECORDS INSPECTIONS

AUTHORITY

Section 11 of FIFRA and 40 CFR Part 171 require dealers and commercial applicators to maintain records of sales, distribution, and application of restricted-use pesticides (RUPs).

Section 8(b) of FIFRA provides the authority to inspect and to copy records.

Section 9(a) of FIFRA provides the basic authority for establishment inspections.

Section 12(a)(2)(B) makes it unlawful to refuse to allow any entry, inspection, copying of records, or sampling that is authorized by this Act.

This chapter provides direction for inspections conducted under federal authority in States and in Indian Country where there are federally conducted programs. Federal inspectors can, however, under the authority of section 8(b) of FIFRA conduct Dealer Record inspections in States and Indian Country that have federally delegated enforcement programs. Section 8(b) of FIFRA States that any producer, distributor, carrier, or dealer shall, upon request

of any officer or employee of the EPA, furnish all records showing the delivery, movement or holding of pesticides. Since many State pesticide laws, including record keeping, are more extensive than FIFRA, federal inspectors must familiarize themselves with the State's pesticide laws prior to conducting these inspections. In cases where State violations are documented the file must be forwarded to the respective State for their follow up or enforcement action.

OBJECTIVES

Inspections are conducted to determine dealer and applicator compliance with FIFRA record keeping requirements regarding sales, distribution, and application of RUPs and to ensure that RUPs are sold only to certified applicators or non-certified persons for application by a certified applicator who is specifically certified for the use of the particular RUP.

POLICY

In addition, establishment inspections and/or use investigations may be conducted in accordance with procedures described in Chapters Seven and Twelve of this manual. Records maintained by dealers and commercial applicators who distribute and use restricted-use pesticides will be reviewed for compliance.

RUP Dealer Records

RUP dealers are required to maintain two primary types of sales records, which are subject to Agency review: (1) sales to certified applicators and (2) sales to uncertified persons. The following lists the information that is required in 40 CFR 169.3(b) and 171.11(g).

Sales to Certified Applicators

Records of each transaction must be retained for 24 months and must include the following information:

- < Name and address of each certified person to whom the pesticide was made available for use.
- < Certified applicator's Certification Number, expiration date, certification categories, and name of State or other governmental unit issuing the certificate.
- < Product name, EPA registration number, and State Special Local Need registration number on the pesticide label.
- < Amount of the pesticide made available for use in the transaction.
- < Date of the transaction.

Sales to Uncertified Persons

Transaction records must be retained for 24 months and must include the following information:

- < Name and address of the uncertified person to whom the pesticide was made available for use by a certified applicator.
- < Name and address of the certified person who will use the restricted-use pesticide.
- < Certified applicator's Certification Number, expiration date, certification categories, and name of State or other governmental unit issuing the certificate.
- < Product name, EPA registration number, and State Special Local Need registration number on the label of the pesticide.
- < Amount of pesticide made available for use in the transaction.
- < Date of the transaction.

RUP Applicator Records

Commercial applicators and those who contract with commercial applicators to apply RUPs to property owned by another person must maintain applicator records for at least 24 months from the date of pesticide use and they shall include the following information [40 CFR 171.11(c)(7)]:

- < Name and address of the person for whom the pesticide was applied.
- < Location of the pesticide application.
- < Target pests.
- < Specific crop or commodity and site to which the pesticide was applied.
- < Date and time of application.
- < Trade name and EPA registration number of the pesticide applied.
- < Amount of pesticide applied and percentage of active ingredient per unit of pesticide used.
- < Disposal information.

PROCEDURES

At the beginning of a records inspection, the inspector must follow routine procedures of identifying and notifying the owner, operator, or agent-in-charge of the establishment as outlined in Chapters Seven and Twelve of this manual.

RUP Dealer Inspection

The inspector must check for dealer reporting to EPA (40 CFR 171.11 (g)) or State license expiration date and record dealer license number, if applicable. The inspector must determine whether the dealer is selling or has sold any RUPs and whether the dealer is also an applicator of restricted-use pesticides.

Records must be reviewed to determine compliance with FIFRA and to ascertain whether all the previously listed required information is being maintained. Any deficiencies must be documented. (e.g., through photocopies and/or photographs, affidavits, statements, etc.).

RUP dealers' stocks must be inspected and RUPs inventoried. The inspector must document the following situations:

- < Sales to non-certified persons or for use by non-certified persons.
- < Discrepancies between physical inventories and transactions (Books and Records Inspection including computer inventories).
- < Improperly labeled products, including agricultural pesticides lacking Worker Protection (WPS) label statements.
- < Suspended or canceled products sold and/or held for sale and distribution.
- < Damaged products and any corrective actions taken.
- < Improperly stored products.

RUP Applicator Inspection

The inspector must check the Certified Applicator's Certification Number, certification categories, and expiration date.

Records must be reviewed to determine compliance with FIFRA and to ascertain whether all the previously listed required information is being maintained. Any deficiencies must be documented (e.g., through photocopies and/or photographs, affidavits, statements, etc.).

Pesticide stocks must be inspected and RUPs inventoried. The inspector must document the following occurrences:

- < Discrepancies between physical inventories and amount used (Records Inspection).
- < Improperly labeled products, including agricultural pesticides lacking Worker Protection (WPS) label statements.
- < Suspended or canceled products being held for use.
- < Damaged products and any corrective actions taken.
- < Improperly stored products.
- < Improper disposal of container, excess pesticide, and rinsates.